

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 63437-2-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
STEVEN THOMAS BARBERI,)	UNPUBLISHED OPINION
)	
<u>Appellant.</u>)	FILED: May 3, 2010

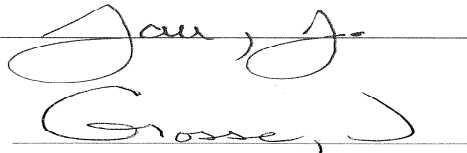
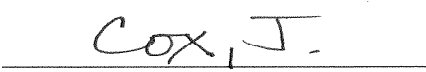
PER CURIAM. Steven Barberi appeals his convictions for two counts of second degree burglary. He contends, and the State concedes, that the convictions must be reversed and dismissed without prejudice because the information failed to allege the essential elements of the offenses. We agree.

A person commits second degree burglary “if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle or a dwelling.” RCW 9A.52.030(1). The information in this case alleged in both burglary counts that Barberi, “with intent to enter or remain unlawfully in a building other than a vehicle or dwelling . . . to wit: Pro Shop at Reverside Golf Course, in violation of RCW 9A.52.030 [.]” The information thus alleged the wrong mens rea and completely omitted the actus reus of the offense. It was therefore constitutionally insufficient. State v. Kiorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991).

Because Barberi was also convicted of bail jumping and because his offender score and standard range on that offense will change when the burglary convictions are dismissed, we reverse the burglary convictions without prejudice and remand for resentencing.

Reversed and remanded for proceedings consistent with this opinion.

For The Court:


Grosse, J.

Cox, J.